Court File: 32161

IN THE SUPREME COURT OF CANADA.

BETWEEN:

JOSHUA COHEN, B.A., M.A.

APPLICANT
(*Appellant*)

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT
(*Respondent*)

MOTION FOR STAY OF EXECUTION
(Rule 62 of the *Rules of the Supreme Court of Canada*)

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Self-Representation for Applicant

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Counsel for Respondent

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JOSHUA COHEN, B.A., M.A.

APPLICANT
(*Appellant*)

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT
(*Respondent*)

NOTICE OF MOTION FOR STAY OF EXECUTION

TAKE NOTE that Joshua Cohen hereby applies to the chief justice, the honourable Beverley McLachlin, pursuant to rule 62 of the *Rules of the Supreme Court of Canada ("RSCC"),* for an order for a stay of execution re: file #32161 or any further or other order that the honourable chief justice, Shirley McLachlin, may deem appropriate.

AND FURTHER TAKE NOTE that the Motion shall be made on the following grounds:

1. This motion is made for a stay of execution of this Court's Registrar re: their decision of February 21st, 2008, dismissing the motion for reconsideration of file #32161, pursuant to 62 of the *RSCC.*

2. The Applicant is still currently **without counsel** and desires such as a basic 'right' for access to justice and a fair hearing, as requested in the previous motion for reconsideration, via *the Supreme Court Act* 53 (7), and one previous to that in the *Court of Appeal.*

3. The Applicant, Joshua Cohen ("J.C.") **appeals to a judge** (i.e., chief justice Beverly McLachlin) by empowered discretion and **not to the Registrar,** pursuant to Form/Rule 47 of the *RSCC.* The latter is the case now and was in the previous motion for reconsideration. Thus, the Registrar is apparently "ultra-vires" in the above Rule. Rule/Form 52 of the *RSCC* is to the Court in general and has never been used to this point.

4. "Ultra-vires"not only relates to jurisdictional error (or "the exercise of the wrong power in the circumstance" –Daphne, p. 229-see Append. p. 43) but also to **natural justice, procedural fairness and good faith** (referred later).

Besides the motion for reconsideration not reaching its intended recipient, J.C. was precluded from "access to justice" and a "fair hearing," via the access restriction to rule 78 of the *RSCC* in the decision of Feb. 21st, 2008. Such latter circumvention by this Court has mandated an "emergency hunger" recourse to the only possible "crumb left to wave"-- Rule 62 of the *RSCC*, herein, applied to prevent contempt of court!

Dated at Ottawa, in the Province of Ontario, this 7th day of March, 2008

J. Cohen

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Self-Represented Applicant

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ORIGINAL TO: **THE REGISTRAR**

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Counsel for the Respondent

ATTEMPT FORWARD: ***Canadian Hearing Society, Assn For the Deaf,*** **Scott Simser (Deaf Lawyer), Jane Scharf (former and future mayoral candidate), etc.**

NOTICE TO THE RESPONDENT TO THE MOTION: A Respondent may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge.

APPENDIX: SUPPORTING DOCUMENTS

4

Court File: 32161

IN THE SUPREME COURT OF CANADA.

BETWEEN:

JOSHUA COHEN, B.A., M.A.

APPLICANT
(*Appellant*)

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT
(*Respondent*)

MOTION FOR RECONSIDERATION
(Rule 73 of the *Rules of the Supreme Court of Canada*)

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Counsel for Respondent

December 31st, 2007

To: Registry (Supreme Court of Canada)

Re: *Joshua Cohen, B.A., M.A. v. AGC* (File #32161)

ERRATUM

Please take note error corrections in the latest submission, re: a *Motion for Reconsideration,* which the Applicant, Joshua Cohen ("J.C."), herein presents as either an interlineation, amendment and/or omission correction, if this Court will kindly regard and append to the above.

Pages

There are two pages as –27-. The first page –27- consider as: "-27 (a)-" and the second as: "-27 (b)-".

Affidavit

a) P. 6,par. 14,line 5, after (see J.C.'s *ALA,* p. 32) should read : "would pass go."

b) P. 8, par. 18, after "mandate" should read: "(Appendix p. 22)".

c) P. 9, par. 22, line 4, "document" should read: "documented".

Statement of Argument

i) P. 25, par. 1, line 4, "ldave" should read: "leave".

ii) P. 26, par. 4, line 3, "at paragraphs 25-28" should read: "at par. 3".

iii) P. 26, par. 5, line 1, "at par. 27" should read: "par. 12".

iv) P. 26, par. 6, line 1, "at par. 29" should read: "par. 12, 22".

v) P. 26, par. 7, line 4, "at par. 30-32" should read: "par. 15-17".

vi) P. 27 (a), par. 8, line 2, at "par. 25-28" should read: "par. 3, 10-13".

vii) P. 27 (a), par. 10, line 1, at "par. 38" should read: "par. 23".

returned to me Feb 21 st/08 by Registrar copy of Court's Copy

J.C.

Omitted Order

On page 27 (b), an Order as 6) was omitted and should have red: "A *Supreme Court* library pass for the Applicant, as part of *access to justice.*

J.C.'s Copy J.C.

February 5th, 2008

To: Registry (Supreme Court of Canada)

Re: *Joshua Cohen, B.A., M.A. v. AGC* (File #32161)

ERRATUM II

Please take note error corrections re: a *Motion for Reconsideration*, which the Applicant, Joshua Cohen ("J.C."), herein submits as either an interlineation, amendment and/or omission correction, if this Court will kindly regard and and append to the above file.

Re: Access to Justice

J.C. mentioned in his affidavit on p. 5 at par. 11: "Even as our chief justice has remarked, as paraphrased, the 'basic right' of representation for Canadians is an 'increasingly urgent situation' (Ibid, p. 17)." The above word 'representation' should be qualified as legal services, which is to be understood as part of access to justice.

In the submitted Justice Ministers' Press Release of June 20th, 2007, requesting fair and urgent federal funding for their respective provincial legal aid systems, the term "access to justice" in relation to legal (aid) services funding is mentioned no less than three times on page 15 of the above motion.

For instance, Newfoundland's minister has said, "Legal aid is fundamental in terms of **access to** our **justice** system and it greatly impacts the most vulnerable in our society (emphasis mine)."

Moreover, Alberta's Attorney General has remarked, "Legal aid is an important part of ensuring **access to justice** for all Canadians (bold mine)."

And finally, Manitoba's Attorney General has expressed, "We must ensure **access to justice** for low-income Canadians who need and deserve legal aid services."

The Canadian Bar Association, likewise, refers to "legal aid (as) the key to the courthouse door …. **All of us – regardless of means** – must be assured of effective and **equal access to the judicial system** when our fundamental interests are at stake (highlight mine)."

Relating to legal services and access to justice issues, the chief justice once relayed:

> *Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care and education.*
>
> - Beverly McLaughlin, Chief Justice, (2002) 29.1 Manitoba Law Journal 281.

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APPLICANT
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AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT
(*Respondent*)

NOTICE OF MOTION FOR RECONSIDERATION

TAKE NOTE that Joshua Cohen hereby applies to the chief justice, the honourable Beverley McLachlin, pursuant to rule 73 of the *Rules of the Supreme Court of Canada,* for an order for a reconsideration of file #32161 or any further or other order that the honourable chief justice, Shirley McLaughlin, may deem appropriate.

AND FURTHER TAKE NOTE that the Motion shall be made on the following grounds:

1. This motion is made for the reconsideration of the judgment of the *Supreme Court of Canada* dismissing file #32161 on Nov. 15th, 2007, pursuant to rule 73 of the *Rules of the Supreme Court of Canada.*

2. The Applicant, Joshua Cohen ("J.C."), is a disabled self-represented party of "*indigent*" and/or "*in forma pauperis* status" currently without counsel, despite requesting one from Legal Aid Ontario and via a previous motion with the Federal Court of Appeal. Since laws do not cover everything, either from the legislative and/or executive branches of gov't, an unwritten constitution can and should be sought to protect fundamental unwritten principles and rights. One such basic right should be **access to justice** relating to civil legal aid funding for J.C., as an indigent disabled litigant, to keep within the scope

of an evolving inclusive society. Thus, J.C. seeks relief via 53 (7) of the *Supreme Court Act,* and/or via a letter of recommendation directing Legal Aid Ontario to restore a legal aid certificate and/or the benefit of an *Amicus Curiae, as deferred to this Court's expertise.*

3. J.C. seeks reconsideration of this file and/or allowance to state a constitutional question related to his disability (inclusive of access to justice issues, if this court will allow as supplemental submissions) and likely infringements of either and/or both sections of 7 and 15 of the *Canadian Charter of Rights and Freedoms* (*"CHRF"*), if this is recommended.

Dated at Ottawa, in the Province of Ontario, this 17th day of December, 2007

J. Cohen

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Self-Represented Applicant

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Counsel for the Respondent

NOTICE TO THE RESPONDENT TO THE MOTION: A Respondent may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

Court File: 32161

IN THE SUPREME COURT OF CANADA

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JOSHUA COHEN, B.A., M.A.

APPLICANT
(*Appellant*)

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT
(*Respondent*)

AFFIDAVIT of Joshua Cohen
Affirmed on December 17th, 2007

I, Joshua Cohen ("J.C."), of the City of Ottawa, in the Province of Ontario, AFFIRM the following to the best of my recall and ability, related to **exceeding circumstances,** that:

1. I, Joshua Cohen ("J.C."), am acting in the capacity of the Applicant, via self-representation. And I have personal knowledge (and/or private feelings/beliefs/opinions) of the facts herein deposed, other than any sourcings submitted which I believe to be true.

Background

2. I, J.C., have been a hearing-impaired disabled self-representative litigant navigating through a very challenging judicial system since 2005. Consequently, over the past two years, I have experienced a cancelled financial aid certificate, which left me **unrepresented by counsel**. Thus, I have had to spend countless hours as an amateur laity reading various *Acts*, *Federal Court Rules*,

jurisprudence materials, law dictionaries, *Supreme Court Act ("SCA")* and *Rules of the Supreme Court of Canada ("RSCC")*, etc., **without legal assistance**.

3. Further, I have done my own legal work, exhibits and all, with a couple of motions and oral hearings in the lower courts, **without a much needed counsel**. In fact, in one motion at the Federal Court of Appeal ("FCA"), I requested that a letter of recommendation be sent by that court to Legal Aid, directing them to provide me a legal certificate for a lawyer, as a public defender. And that request (#6) was supposedly without jurisdiction (See Appendix: pp. 11-13), despite, as I know it, that legal aid is supported by federal dollars as well (Ibid, pp. 14-16). Thus, veritable ***access to justice*** for me has fallen on "deaf ears," ironically, thus far. Thus, is my appeal, in part, in this reconsideration motion for the much needed relief of 53(7) of the *SCA*, whereby ***access to justice*** could be fulfilled.

4. Moreover, I also requested (as #2) in the above motion that the Attorney General of Canada ("AGC") demanded transcripts be covered by the *FCA* for the sake of the "duty to accommodate" the disabled and due to constitutional official language rights access (being English or French in the courts) and *Canada Evidence Act* arguments, since my court language was officially in American Sign Language, which has no written version (Ibid, pp. 11-13). Instead, I had to pay approx. $640.00 for the English transcripts. I know I have overcome numerous judicial systemic hurdles to this point and The Supreme Court of Canada ("SCC") is my last resort!

5. At the "end of the legal day," however, I feel like little "David" up against the "Goliath" AGC, whom, questionably, have the power to de-seat judges according to *sec. 63* of the *Judges Act.* This has led me to query whether the judges I have had, to this point, have really kept at "***arm's length***" from the gov't during my proceedings? And, thus, has there really been the execution of judicial office, via political deference, and/or have they succumbed to the fear of "Goliath"? The above issue is not new and was highlighted in the favourable *SCC* file of *The Honourable Justice Paul Cosgrove v. AGC* [2006] 1 F.C.R., 187-392.

6. Even to do this motion, by seeking an example format, as I understand it from a call made to this registry, I do not have access to the library of the *Supreme Court*, as I am not a lawyer/solicitor, per say. I sense I have been relegated to "third class" citizenry and referred to another local law library at Ottawa U, which would, in my case, be substandard. And as a disabled "agent of defense," I sense, again, like "David" without the "armour" of ***access to justice***, via judicial materials in this land's Highest Court's holdings … and is this reasonable?

7. So, the question remains how am I supposed to win "campaigns for human rights equality," with such apparent "stacks of odds" against me? And seeing in my

mind's eye, "Goliath" going to-and-fro with unhindered judicial access to finances, manpower, and even to the *Supreme Court's* library, if need be.

8. The lower courts, allowed me, I believe, "half-wins" by not awarding costs, reflecting their reservations in this case. Moreover, the FCA permitted further leverage to the AGC, at the hearing of May 3rd, 2007, to file *additional submissions*, which were not in counsel's brief that day. After my reply, the above court dismissed my file without costs on May 15th, 2007. Even worse, the *Supreme Court*, dismissed my *ALA* without a hearing and with costs on Nov. 15th, 2007!

9. Other facts the coram of Supreme Court justices did not know was that my *ALA* occurred during a very taxing on and off coupleship breakdown due, in part as I recall, to stressful court proceedings, wherein professional couple counseling was sought at a local agency. An irreconcilable separation occurred and due to the emotional distraction and recovery period, I missed an afforded reply opportunity, as per *Rule 28* of the *RSCC,* to the *AGC's* response to my *ALA.*

Access to Justice and Why it was not Previously Raised …

10. As one can partly see in the above, one of the **exceeding circumstances** I raised was ***access to justice.*** This issue has recently come to the forefront around the time my *ALA* was due and submitted on Aug. 14th, 2007. Unbeknownst to me and just two days prior to that, on Aug. 12th, 2007, there was an unprecedented **breaking news press release**, wherein **chief justice, Beverly McLachlin**, declared, at the Canadian Bar Association on Aug. 11th, 2007, and along these lines, that "**access to justice was a 'basic right' for Canadians, like education and health care** (emphasis mine -- Appendix: pp. 17-18)."

11. Re: the above, I did not have any previous **substantive sourcing** to raise my concerns about the lack of counsel representation I have experienced as an indigent disabled litigant with the *SCC* in my latest *ALA.*. Even as our chief justice has remarked, as paraphrased, the "basic right" of representation for Canadians is an "increasingly urgent situation" (Ibid, p. 17). Perhaps now, I can be the "litmus test" by bringing this principle right to the top, via this motion for reconsideration and a call for relief, via 53(7) of the *SCA;* and/or a letter of recommendation to Legal Aid encouraging the restoration of my legal aid. certificate; and/or even via an *Amicus Curiae* whom may be my help, as deferred to this Court's expertise.

12. In addition, a Gov't of Canada document says (Appendix: p. 19), "in the law courts, representation by counsel is widespread and often mandatory. Before administrative tribunals, the principle of natural justice enshrine the right of legal representation. **Section 2(e) of the *Cdn Bill of Rights* grants every person**

require to give evidence before a tribunal the right to be represented by counsel (emphasis mine)." And even before the Canadian Human Rights Commission ("CHRC") tribunal to now, I have always been unrepresented by counsel.

13. Further to what was said in par. 3 above, most of legal aid's funding is appropriated for criminal defense aid despite that most criminal charges by the police are based on probable cause. "Family and **civil aid services are being eroded because we have to address rising criminal legal aid demands** (bold mine) …." (Manitoba Attorney General – voicing concerns with other premiers -- June 20th, 2007 – Appendix: p. 15). I factor into the latter, somehow, as an unrepresented human rights litigant. And since the demise of *Court Challenges of Canada* in 2006 who can and/or will be able to fund human rights causes, other than the rich, if even they make the effort from their comfort zone? Thus, our rights and freedoms will now surely diminish "one book at a time."

A Constitutional Question

14. I never entertained the thought of a constitutional question related to access to justice and disability with litigations of sec. 7 & 15 of the *Canadian Charter of Human Rights and Freedoms ("CHRF")*, believing that a one and only human rights file #20040226 originally deposed well within the one-year with the CHRC on March 24th, 2004 (see J.C.'s *ALA*, p. 32) that file was officially re-opened later by CHRC on May 3rd, 2005 (Ibid, p. 39), one day before I re-submitted file #20040226 on May 4th, 2005 (Ibid, p. 40). However the Courts so far have not respected this one and only numbered file (20040226). Furthermore, an earlier Complaint Summary (dated April 6th, 2004 – Ibid, p. 33) by CHRC was never sent to me and was obtained difficulty by the Access to Info. Program when I originally prepared for the lower court proceedings. This original Complaint Summary confirmed links to discrimination based on disability, such as "differential treatment" and "refusal to hire." Mediation was to occur as is documented on April 15th, 2004 – Ibid, p. 34. More than a year later, a second Complaint Summary by CHRC, dated May 9th, 2005 (Ibid, p. 41), confirmed what the first summary said with an added highlighted word "**adverse** differential treatment (bold mine)" and "discriminatory police (sic) and practice."

Astounding Recently Published Stats Relating to the Hearing-Impaired …!

15. J.C., in his *ALA,* pp. 45-46, submitted reputable stats from the Public Service Commission ("PSC"), via Acess to Info., that only 5 hearing-impaired persons have been accepted in the Federal Gov't's Management Training Program in over an approx. 13 year period. Only two of those had Master's degrees (Ibid, p. 45). The Canadian Hearing Society says about 23% (and/or approx. 1 in 4) Cdns are hearing-impaired ("H.I."). Considering the Cdn. population at around 30,000,000,

this is about 7 ½ million Cdns, whom are H.I.! Thus, there is a grave under-representation of the H.I., in the above program, contrary to the *Employment Equity Act,* for instance.

16. Moreover, recently published (May 26th, 2007) H.I.stats re: their employment by the *Cdn Assn of the Deaf* (Appendix: pp. 20-21) officially declares that:

> "Deaf representation in the professions and in 'high level' (or 'high power') such as corporate executives is almost non-existent. To the best of our knowledge, Canada has only **three or four Deaf layers, one Deaf doctor, one Deaf psychologist and one Deaf university professor** .... Out of some thirty service agencies ... serving Deaf people, **only four or five are run by Deaf executive directors**. Of twelve schools for the Deaf, **none are led by Deaf principals or superintendents**.
> "**The Public Service Commission** ...reported in 2001 that **only 1.1 percent of federal employees self-identify as either deaf and/or hard of hearing. Using the "one in ten" rule to distinguish the deaf from the hard of hearing, this means an incredible minuscule 0.1 percent of the federal civil service is Deaf (**as understood, capitalized D reflects those who are culturally Deaf and know American Sign Language – emphasis mine)."

17. Now figure either 1.1% and/or the one-in-ten figure with up to 7, 500,000 H.I. Cdns! Then could any one say honestly that the above is **not a national issue of public importance?**

Judicial Systemic Barrier ...?

18. The AGC has argued in their reply submissions to J.C.'s *ALA* that file # 32161 "**does not raise an issue of public importance** (bold mine)" (See Respondent's Response to *ALA,* p. 12) as understood for disabled Cdns, such as the hearing impaired. This does not apparently fulfill the Justice Department's mandate to protect the public interest, especially of vulnerable Canadians. Instead, the AGC adversarial role to J.C. (and the courts' dismissals) has (have) been, obviously, another judicial systemic barrier so far. And not only the latter toward J.C. personally, but toward many human rights principles for the disabled that J.C. has put forward (and argued valiantly via jurisprudence), and as can be found in his *ALA,* such as:

    a) the *duty of accommodation* of the disabled;
    b) *duty to examine* new evidence ...
    c) *to differentiate adversely* and thus deprive of *(equal) opportunity employment* (i.e., as *refusal to hire)* as confirmed in two CHRC Complaint Summaries;

d) *duty to proceed* with file #20040226;
e) *duty to disclose* the April 6th, 2004 CHRC Complaint Summary;
f) *duty to act fairly* (with good faith and procedural fairness in mind), etc.

Over and above the AGC, the SCC's mandate (Appendix: p.22) is to apply:

i) the rule of law;
ii) independence and impartiality;
iii) (and) **accessibility to justice** (bold mine).

Recent Sourcings Not Previously Available

19. Another reason pertinent issues above were not put forth earlier is due to the recent sourcings of secondary authorities/documents that were not previously available for arguments in file #32161 until now. As one can see, for the most part these secondary references have only been released approx. mid-year and/or later in 2007. Other than the breaking news releases by the honourable chief justice, Beverly McLachlin, others above have been by the *Cdn Assn for the Deaf* and/or the provincial premiers needing more urgent federal dollars for legal aid to fund civil legal aid.

What is it Worth?

20. **Merit** needs to be discussed to convince judges that I, J.C., am an **abled** disabled. After all Federal testing assessments were done, I received a 4 out of 5 and/or 80+% that I would succeed in the Management Training program, if allowed (Appendix: p. 23). As was relayed already in my *ALA*, p. 21, the CHRC stated, "*we (CHRC) received the revised complaint wherein you established* ***a link to a ground*** (bold mine)." It also apparently remains that I made a link(s) before and the CHRC Complaint Summary of April 6th, 2004 (not given to me except through Acess to Info.) obviously confirms that as well as a mediation that was to occur was also documented on April 15th, 2004, as well as a *Court Challenges of Canada ("CCC")* finding of "*a basis for a strong individualized human rights complaint*" (J.C.'s *ALA*, p. 18 par. 1-2). It must again be reiterated that at the time I filed my case with CCC, it was very amateur, occurring in 2004, a year before I harnessed more actual legal experience with the courts which has been ongoing since 2005. I look in hindsight realizing my mistakes as lessons for today.

21. Further, the Public Service Commission required I have a M.A. vs. others needing only a B.A. In addition, my French results and bilingual (actually multilingual status) was not taken into consideration despite the bilingual posting. This was addressed in J.C.'s *ALA* at p. 24.

22. Since what CHRC has already confirmed above, via two of their complaint summaries of April 6th, 2004 and May 9th, 2005 (J.C.'s *ALA* pp. 33, 38) and the link to a ground, as explained above, may be the basis for a constitutional question, primarily, in this case to sec. 15 of the *CHRF*. Officially documented is "refusal to hire, adverse differential treatment and discriminatory police (sic) and practice." This, of course will depend on this Court's authority to allow supplemental submissions, as the FCA once allowed the AGC.

Before I go …

23. In an FCA motion (Appendix: pp. 11-13), exhibit 11 was denied as new evidence for my appeal, as well as pertinent others. I have become more clever to use this document as a reputable secondary authority. It was an *Ottawa Citizen*, dated Dec. 5th, 2005 (Ibid, p. 24) entitled:

> "***McLachlin urges judges to go beyond letter of the law – Courts should defy legislation to protect rights****, chief justice says."* Moreover, *"**judges should feel 'emboldened' to trump the written word of the constitution, when protecting fundamental, unwritten principles and rights** says Canada's chief justice." "**The rule of law requires judges to uphold unwritten constitutional norms, even in the face of clearly enacted laws or hostile public opinion*** (emphasis mine) **…."**

24. And the question remains to be seen … if the above will work for me now …?

AFFIRMED BEFORE ME at the City of Ottawa,
in the Province of Ontario, on December 17th, 2007.

Commissioner for Taking Affidavits

(And/or Stamp)

NATHALIE CAMILLE PINARD
A Commissioner /
Commissaire
Expires / Date d'expiration:
November 30, 2010
Le 30 novembre 2010
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

December 17th, 2007

Joshua Cohen, B.A., M.A.

APPENDIX: NEW SUPPORTING DOCUMENTS

Federal Court of Appeal

Cour d'appel fédérale

Date: 20060825

Docket: A-278-06

Ottawa, Ontario, August 25, 2006

Present: **DESJARDINS J.A.**

BETWEEN:

JOSHUA K. COHEN, B.A., M.A.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER

The appellant requests the following from the Court:

1. An order granting J.W.'s note-taking documents be authorized as relevant admissible evidence, in the spirit of the "duty to accommodate" the physically disabled and for the sake of the "Onus of Proof".

2. An order allowing oral transcriptions, without cost, to the Appellants, if this Court demands them, as per the "duty to accommodate" and/or for official language constitutional rights.

3. An order authorizing J.C. leave to present new evidence on a question of fact on Appeal re. Exhibits 1,6-11, herein deposed.

4. An order for this Court to determine the Contents of the Appeal Book.

5. An order for the Administrator to prepare an Appeal Book for the Appellant, without cost.

6. An order, if possible, via a letter of recommendation, directing Legal Aid to provide J.C. a legal certificate for a lawyer, as a public defender for J.C.

7. Any other orders of direction, only if deemed necessary, for the success of this motion.

The requests numbered 1, 2, 3, 5, and 7 are dismissed as being without merit.

The Court is without jurisdiction to consider request 6.

Request 4 deals with the contents of the Appeal Book.

Rule 344 of the Federal Court Rules SOR/98-106 provides:

Content of appeal book 344. (1) An appeal book shall have a grey cover and contain, on consecutively numbered pages and in the following order,	**Contenu du dossier d'appel** 344. (1) Le dossier d'appel porte une couverture grise et contient, sur des pages numérotées consécutivement, les documents suivants dans l'ordre indiqué ci-après :
(a) a table of contents describing each document;	a) une table des matières désignant chaque document;
(b) the notice of appeal and any notice of cross-appeal;	b) l'avis d'appel et, le cas échéant, l'avis d'appel incident;
(c) the order appealed from, as signed and entered, and any reasons therefor;	c) l'ordonnance portée en appel, telle qu'elle a été signée et inscrite et, s'il y a lieu, les motifs de l'ordonnance;
(d) the originating document, any other pleadings and any other document in the first instance that defines the issues in the appeal;	d) l'acte introductif d'instance, les autres actes de procédure et tout autre document déposé dans la première instance qui définit les questions en litige dans l'appel;
(e) subject to subsection (2), all documents, exhibits and transcripts agreed on under subsection 343(1) or ordered to be included on a motion under subsection 343(3);	e) sous réserve du paragraphe (2), les documents, pièces et transcriptions énumérés dans l'entente visée au paragraphe 343(1) ou dans l'ordonnance qui en tient lieu;
(f) any order made in respect of the conduct of the appeal;	f) toute ordonnance relative au déroulement de l'appel;

(g) any other document relevant to the appeal;	g) tout autre document pertinent;
(h) an agreement reached under subsection 343(1) as to the contents of the appeal book or an order made under subsection 343(3); and	h) l'entente visée au paragraphe 343(1) ou l'ordonnance qui en tient lieu;
(i) a certificate in Form 344, signed by the appellant's solicitor, stating that the contents of the appeal book are complete and legible.	i) le certificat établi selon la formule 344, signé par l'avocat de l'appelant et attestant que le contenu du dossier d'appel est complet et lisible.
Transcripts separate (2) Transcripts may be reproduced in a separate document.	**Transcriptions** (2) Les transcriptions peuvent être reproduites dans un document séparé.

This Court orders that the contents of the Appeal Book be the following:

a) a table of contents describing each document;
b) the notice of appeal;
c) the order appealed from, as signed and entered, and any reasons therefor;
d) the originating document, any other pleadings and any other document in the first instance that defines the issues in the appeal;
e) the exhibits that were entered on the date of the hearing;
f) a certificate in Form 344, signed by the appellant, stating that the contents of the appeal book are complete and legible;
g) transcripts should be reproduced considering allegations made by the appellant in his Notice of Appeal.

"Alice Desjardins"

J.A.

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 25th day of August A.D. 20 06

Dated this 25th day of August 20 06

Français

Ontario

Provinces Call For Increased Federal Funding For Legal Aid

NEWS RELEASE

News Release

Chart

For Immediate Release
June 20, 2007

Justice Ministers Stand Together

OTTAWA — Provincial justice ministers united on Parliament Hill today to call on the federal government to increase federal funding for legal aid services, Ontario Attorney General Michael Bryant announced. A Liberal, Conservative and a NDP provincial justice minister made the tri-partisan case today for federal action.

"We are joining together to ask the federal government to pay its fair share as a partner in the justice system," said Bryant. "While legal aid is a shared responsibility between the federal government and the provinces and territories, the provinces continue to contribute a disproportionate amount toward their legal aid systems. The McGuinty government, for example, has increased provincial funding to Legal Aid Ontario significantly since taking office, paying four times as much as the federal government."

In October 2006, provincial and territorial justice ministers unanimously agreed that current federal contributions to legal aid were not enough. They once again asked the federal government to commit to critically needed increases for legal aid and for new funding for civil legal aid that would include family law and domestic violence cases.

While the provinces continue to increase funding to legal aid, the level of federal support has remained virtually unchanged since 2003/04. The last time the federal government was a 50/50 partner was 1990/91. The federal government, in its 2007 Budget, indicated that criminal legal aid funding would be maintained at current levels for the next five years.

"The Saskatchewan Legal Aid Commission also gets four times more funding from the province than from the federal government," said Saskatchewan Justice Minister Frank Quennell. "Not only has the federal government refused to recognize the current need for legal aid funding, they must recognize that their changes to Canada's criminal justice system are costly. They must be willing to invest to meet both the current and increased demands for legal aid."

"We're asking the federal government to step up to the plate," said Nova Scotia Minister of Justice Murray Scott. "The provinces strive to provide legal assistance for family law clients who are often women and children. But we can only do so much. We are asking the federal government to commit to funding for civil legal aid."

"Legal aid is fundamental in terms of access to our justice system and it greatly impacts the most vulnerable in our society," said Newfoundland and Labrador Minister of Justice Tom Osborne. "In Newfoundland and Labrador, the lack of sustained funding makes the process of building a legal aid delivery system that is capable of meeting the needs of our citizens difficult. And we, as a provincial government, are committed to providing equal access to family law related services to all citizens of our province."

"Without additional federal resources, provinces and territories are concerned about whether we can maintain current levels of civil legal aid service," said Québec Attorney General Jacques P. Dupuis. "We would like a federal commitment on legal aid funding now."

"Legal aid is an important part of ensuring access to justice for all Canadians," said Alberta Attorney General Ron Stevens. "Increased federal legal aid funding is necessary if the provinces and territories are to continue to enable that access for those in need."

"Family and civil legal aid services are being eroded because we have to address rising criminal legal aid demands on a flat-lined federal budget," said Manitoba Attorney General Dave Chomiak. "We must ensure access to justice for low-income Canadians who need and deserve legal aid services."

"The Canadian Bar Association believes that legal aid is the key to the courthouse door," said Canadian Bar Association President-elect Bernard Amyot. "For those without the economic means, that key is beyond their reach. All of us — regardless of means — must be assured of effective and equal access to the judicial system when our fundamental interests are at stake."

Legal aid protects constitutional and legal rights and ensures fair and equal treatment for people with low incomes facing criminal charges. The provinces and territories fund legal aid for parents with low incomes involved in child protection proceedings or seeking custody, access or financial support for themselves or their children.

"The provinces and territories are in critical need of new, dedicated and specific funding for civil legal aid," said Bryant. "Federal funding would mean more family law clients would get the legal services they deserve. The provinces and territories stand united in calling for increased federal funding for legal aid services."

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Disponible en français

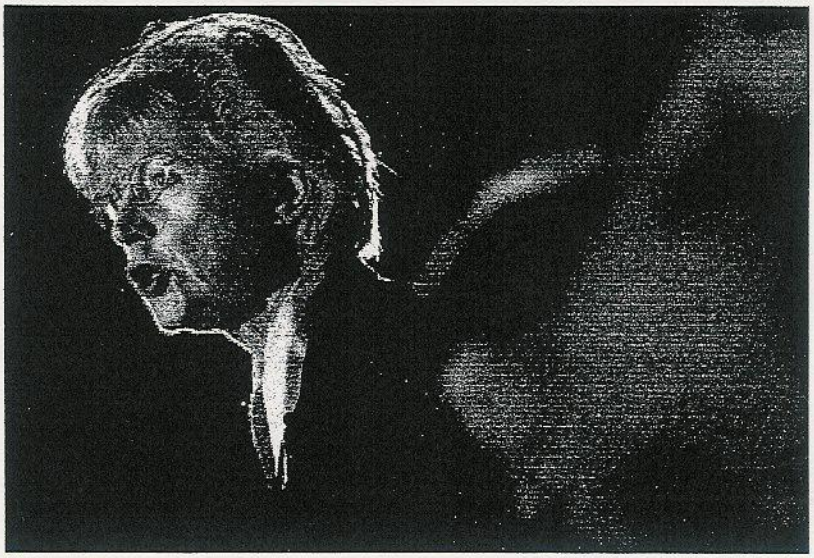
www.attorneygeneral.jus.gov.on.ca

Access to justice a `basic right'

Country's top judge says the system's high cost is an `urgent' problem that must be addressed, But lawyer's recent accusations of money-grubbing among his peers won't help, chief justice says

Aug 12, 2007 04:30 AM

TRACEY TYLER
LEGAL AFFAIRS REPORTER



ANDREW STAWICKI/TORONTO STAR FILE PHOTO
Chief Justice Beverly McLachlin seen in this file photo.

CALGARY–Chief Justice Beverley McLachlin has issued a call to action to governments, lawyers and judges to find solutions to the access-to-justice "crisis" imperilling the country's legal system, which is now too expensive and complicated for the vast majority of Canadians.

In a speech to the Canadian Bar Association yesterday, the country's top judge declared access to justice "a basic right" for Canadians, like education or health care.

Although McLachlin has spoken out about the problem in the past, she sharpened her remarks yesterday and went further than she has before, citing what she described as an "increasingly urgent situation."

The justice system risks losing the confidence of the public when "wealthy corporations," or the poor, who qualify for legal aid, have the means to use the court system, she said, noting that for "middle-class" Canadians, resolving a legal problem of any significance often requires taking out a second mortgage or draining their life savings.

CIVIL JUSTICE REFORM PROJECT
DARK SIDE OF JUSTICE (MARCH 3)
A 3-DAY TRIAL LIKELY TO COST $60,000 (MARCH 3)

A *Toronto Star* investigation this year determined the cost of a routine three-day civil trial in Ontario to be about $60,000, more than the median Canadian family income

Khadr plea wins ovation

The last time Lt.-Cmdr. William Kuebler saw his client Omar Khadr, the only things the Guantanamo Bay prisoner wanted were some crayons and paper.

"The price of justice should not be so dear," McLachlin said in a speech to the bar association's governing council at the opening of a four-day legal conference here.

"Something must be done," she urged. "We must all get on the same track and move down it together."

There's "no point" in having a justice system that nobody can afford to use, McLachlin said. "We need to keep the justice system relevant and available to Canadian men, women and children."

Juxtaposed against McLachlin's concerns, however, are concerns from one member that Canadian lawyers are largely money-grubbing and unprincipled.

Former Bay St. lawyer Philip Slayton offers his stinging assessment in a book called *Lawyers Gone Bad*, which made a splash earlier this month via a cover story in *Maclean's* entitled "Lawyers are Rats."

3)
- LONG TRIALS NOT OUR FAULT: LAWYERS (MARCH 5)
- EDITORIAL: JUSTICE OUT OF REACH (MARCH 6)
- TAKING YOUR OWN COUNSEL (MARCH 7)
- JUSTICE JUDGED TOO COSTLY (MARCH 8)
- CUTS TO LEGAL AID HIT HARD (MARCH 12)
- JUSTICE SUMMIT TO AUDIT SYSTEM (MARCH 13)
- THE SLOW WHEELS OF JUSTICE (MARCH 18)
- LEGAL SYSTEM'S LOSERS (MARCH 30)
- THE CHARTER'S CHALLENGES (APRIL 7)
- CHARTER STILL HAS JOB TO DO (APRIL 13)
- SHOULD LEGAL BILLS BE TAX DEDUCTIBLE (APRIL 24)

Speaking with reporters at a news conference later, McLachlin acknowledged those sentiments aren't useful in developing the momentum needed to improve access to justice.

"I don't think name-calling and exaggeration helps," she said.

The kinds of lawyers described in the book, she added, don't reflect the many who routinely take cases all the way to the Supreme Court of Canada for little or no money.

Later, at a luncheon, former Ontario Chief Justice Roy McMurtry, who was being honoured for 50 years of public service, including work in establishing pro-bono legal services, also condemned the story.

"We should not be intimidated by scandalous, scurrilous articles, such as that which appeared in (a) recent issue of *Maclean's* magazine," McMurtry said.

While high hourly rates charged by lawyers are part of the difficulty – up to $800 an hour in Toronto – the access to justice problem is complicated.

It also stems from the changing nature of the criminal and civil trial process, McLachlin said.

"The cost of legal services does limit access to justice for many Canadians," she said. However, in the criminal justice system, pre-trial motions, which often involve constitutional challenges by accused people to the admissibility of evidence, have become common and often consume a great deal of court time, McLachlin said.

For example, people in jail awaiting trial are subjected to longer periods of pre-trial custody, while those granted bail still have to endure the stress of waiting for their trials, she said.

On the civil side, the use of pre-trial hearings known as "examinations for discovery," which can drag on for months and even years, as well as an increased tendency to rely on expert witnesses, is contributing to longer trials, McLachlin said, with often devastating consequences for litigants.

"People need prompt resolution of issues so they can move on with their lives or businesses."

The good news, she said, is in the past year, the legal profession and government officials responsible for the administration of the justice system have moved past simply talking about barriers to justice and are beginning to seek answers.

Tribunal Proceedings

AN INTRODUCTION TO TRIBUNAL PROCEEDINGS

2. Hearing by the Board of Referees

2.2 Representation at the Hearing

In the law courts, representation by counsel is widespread and often mandatory. Before administrative tribunals, the principles of natural justice enshrine the right to legal representation. Section. 2(e) of the *Canadian Bill of Rights* grants every person required to give evidence before a tribunal the right to be represented by counsel. In the Act and Regulations, the term "representative" is used only three times (A. 111(*b*) and R. 78 (8)); these sections do not expressly enshrine the right to be represented before the board, but case law is favourable to this interpretation.

The right to representation by counsel before an administrative tribunal is not absolute. Its existence depends on the nature of the dispute, the complexity of the case, the seriousness of the allegations contained in the proceedings, and the potential consequences of the decision of the tribunal. Thus the tribunal retains broad discretionary powers to grant or deny legal representation, depending on the degree of litigiousness of the proceedings, potential further delays and institutional constraints.

An administrative tribunal cannot encourage claimants to waive the presence of counsel. A reasonable time may have to be granted for the claimant to retain counsel. Where this right is recognized, the tribunal cannot unduly limit counsel's role.

The right to be represented by any person of his or her choice, including counsel, is also generally recognized before the Board of Referees. Depending on the circumstances involved, the absence of a representative on the day of the hearing may justify an adjournment.

The role of a representative must be limited to that of an agent of either party; representatives must not consider themselves to be a member of the tribunal by assuming such a role.

Canadian Association of the Deaf

Employment and Employability

The issue

The unemployment rate for Deaf people is unacceptably high. There are few Deaf Canadians employed in the professions and in "high level" positions.

CAD's position

Claims about the "unemployability" of Deaf people are unacceptable. The real causes of high unemployment in the Deaf community are hearing patronization, inappropriate educational methodology, and systemic discrimination.

The Canadian Association of the Deaf conducted a survey and data collection project in 1998 on the employment and employability of Deaf Canadians. We found that only 20.6% of Deaf Canadians are fully employed; 41.9% are under-employed; and 37.5% are unemployed. By comparison, 60.9% of all Canadians are employed, and only 8.1% are unemployed.

The combined un- and under-employment rate for Deaf Canadians has remained unchanged over a six-year period (1992-98), despite improvements and growth in the overall Canadian employment rate.

The more education a Deaf Canadian has, the more likely he/she is to be under-employed rather than fully-employed or unemployed.

Although there are differences in the employment rates of men and women, and between the various age groups, unemployment and under-employment are consistently high for all.

Adjusted for resources and workforce size, it appears that the Deaf community is its own best employers, particularly in the fields of education and social services. Deaf employment is weak in the professions and in the high technology fields; it tends to be collected in the industrial and community fields. There is an increasing amount of Deaf self-employment or entrepreneurship. Deaf people hold a good variety of jobs; they are not limited to a small handful of kinds of jobs.

Deaf representation in the professions and in "high level" (or "high power") positions such as corporate executives is almost non-existent. To the best of our knowledge, Canada has only three or four Deaf lawyers, one Deaf doctor, one Deaf psychologist, and one Deaf university professor. Not one of the major telecommunications companies or the major financial institutions in Canada has a single Deaf employee at the executive or upper management level. Out of some thirty service agencies (including the many branches of the Canadian Hearing Society in Ontario) that specifically serve Deaf people, only four or five are run by Deaf executive directors. Of twelve Schools For the Deaf, none are led by Deaf principals or superintendents.

The Public Service Commission, which is responsible for most of the employees of the federal government, reported in 2001 that only 1.1 percent of federal employees self-identify as either deaf or hard of hearing. Using the "one in ten" rule to distinguish the deaf from the hard of hearing, this means an incredibly minuscule 0.1 percent of the federal civil service is Deaf. Moreover, most of them are contract (temporary) workers in menial positions such as file clerks and maintenance staff.

The facts suggest that the primary reason why Deaf people can only find work in the Deaf community is because of barriers to their participation in "normal" society. Potential employers may be reluctant to hire Deaf workers because of assumptions that communicating with them is "too much trouble" and meeting their needs in the workplace would impose a financial strain. Such attitudes are part of a systemic discrimination against Deaf job applicants; they are also part of the discrimination against the promotion of Deaf workers to positions of responsibility and seniority. Ignorance and a lack of information also lead to these wrong assumptions : for example, employers are frequently unaware that the cost of interpreters is a deductible business expense, and that other means of accommodation (such as TTYs and visual alarms) can be subsidized by both federal and provincial incentive programs.

The Canadian Association of the Deaf urges the strengthening of both federal and provincial employment equity

legislation, more aggressive information campaigns to eliminate business concerns about the cost of accommodation, and more funding for the Deaf community to enable it to employ, train, and promote Deaf workers. We advocate a firm partnership between the governments and the Deaf organizations to work together to help Deaf Canadians become more employable, and to move more of them into professional and executive positions. Federal and provincial employment programs must move their emphasis away from creating training opportunities and towards creating job opportunities instead. In particular, the federal government must set an example by drastically increasing the percentage of its own workforce that is Deaf, especially at the executive and policy levels. We strongly demand that Deaf people be put in control of their own institutions, including the Deaf schools and service agencies.

APPROVED: 26 MAY 2007

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Deaf Issues

- Audism
- Captioning and Video Accessibility
- Cochlear Implants
- Deaf Culture vs. Medicalization
- Definition of "Deaf"
- Diversity
- Education
- Employment and Employability
- Health Care
- Human Rights
- Immigration and Medical Admissibility
- Income Tax, Customs Duties, and Postage Rules
- International Concerns
- Interpreting
- Language
- Literacy
- Official Languages
- Physician-Assisted Suicide / Physician-Assisted Dying
- Political Participation and Activity
- Seniors
- Social Security and Assistance
- Statistics on Deaf Canadians
- Technology and Technical Devices
- Telecommunications
- Terminology: Deafness
- Terminology: TTY vs. TDD
- The Canada Census
- Transportation
- Universal Design
- Universal Symbols of Access
- Youth

Canada

About the Court

Role of the Court
The Canadian Judicial System
Court Building
Creation and Beginnings of the Court
Judges of the Court
Administration of the Court
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SCC Bibliography
Employment Opportunities
Client Satisfaction - Registry Branch
Planning Documents
Performance Reports
Proactive Disclosure

SCC Mission and Objectives

Mandate

To advance the cause of justice in hearing and deciding, as final arbiter, legal questions of fundamental importance.

Mission Statement

As the final court of appeal, the Supreme Court of Canada serves Canadians by leading the development of common and civil law through its decisions on questions of public importance.

The Court is committed to :

- The rule of law.
- Independence and impartiality.
- Accessibility to justice.

The Office of the Registrar supports the Court by :

- Providing responsive administrative services.
- Nurturing the dedication, pride and professionalism of its employees.
- Respecting diversity and linguistic duality.
- Collaborating with other courts and legal institutions.

Strategic Objectives

- To ensure the independence of the Court as an institution within the framework of sound public administration.
- To improve access to the Court and its services.
- To process hearings and decisions promptly.
- To provide the information base that the Court needs to fulfill its mandate.

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Dec 5/05 - Ottawa Citizen

Judges: Laws don't cover all

Continued from PAGE A1

Societal values change over time and the constitution document can be incomplete or open to interpretation.

"I believe that judges have the duty to insist that legislative and executive branches of government conform to certain, established and fundamental norms, even in times of trouble," she said. Even countries without constitutionalized bills of rights, such as New Zealand, find ways to ensure fundamental justice based on unwritten norms of fairness, she said.

She noted critics have advocated reining in the use of unwritten constitutional principles on the grounds that it amounts to "judicial imperialism" or even the personal views of an individual judge.

In 1998, the Supreme Court of Canada broke new ground by invoking unwritten constitutional principles in a historic opinion on whether Quebec could unilaterally secede from Canada, she said. The Canadian Constitution is silent on whether a government can secede. So the unanimous court invoked the unwritten principles of federalism, democracy, the rule of law and respect for minorities to arrive at its opinion that Quebecers can leave if they really want to, but only after a clear majority say so in a referendum with a clear question.

In 2001, the Ontario Court of Appeal again relied on unwritten constitutional principles of protecting minorities in a ruling that found it unconstitutional to reduce services at Ottawa's only French hospital, the Montfort.

Chief Justice McLachlin listed several unwritten constitutional norms that have evolved into entrenched rights over time, such as the right to not be punished without a trial, to retain counsel, and enjoy the presumption of innocence.

In another ruling that has been described as one of the Supreme Court's boldest, the judges used unwritten constitutional principles in 1997 to order provincial governments to set up independent commissions to set judges' salaries.

Critics complained the court entered new territory by telling legislatures the process they were to use in doing their jobs.

Mon. Dec 5/05 Ottawa Citizen

McLachlin urges judges to go beyond letter of law

Courts should defy legislation to protect rights, chief justice says

BY JANICE TIBBETTS

Judges should feel "emboldened" to trump the written word of the constitution when protecting fundamental, unwritten principles and rights, says Canada's chief justice.

Beverley McLachlin, in a speech delivered in New Zealand, took on critics who say judges have no business going beyond the strict letter of the constitution to strike down laws and enforce rights.

"The rule of law requires judges to uphold unwritten constitutional norms, even in the face of clearly enacted laws or hostile public opinion," said a prepared text of the lecture Chief Justice McLachlin gave to law students at Victoria University of Wellington late last week.

"There is certainly no guarantee or presumption that a given list of constitutional principles is complete, even assuming the good faith intention of the drafters to provide such a catalogue."

Chief Justice McLachlin set out a blueprint for when judges must rely on unwritten principles, which she defined as "norms that are essential to a nation's history, identity, values, and legal system."

Even in countries that have written bills of rights enshrined in their constitutions, like Canada's Charter of Rights and Freedoms, Chief Justice McLachlin said unwritten principles have a role for several reasons.

See JUDGES on PAGE A2

Ceci est la pièce "LL" référée d
l'affidavit de I. Cohen
assermenté devant moi à Ottawa
ce 28 jour de juillet 20
A Commissaire à l'assermentation

use as secondary authority

Exhibit "23"

A Final Note Regarding Your Ratings

As previously noted, the six competencies assessed during the Integrated Assessment Process (*Cognitive Capacity, Action Management, Teamwork, Interpersonal Relations, Communication and Behavioural Flexibility*) are a subset of the fourteen leadership competencies that have been defined in the context of the La Relève initiative in the federal Public Service of Canada. After achieving consensus ratings on each of these six competencies, the Assessment team examined your pattern of performance in order to make a judgement about your likelihood to acquire the competencies necessary to reach the entry management level within the context of the Management Trainee Program. Your profile of competency ratings was analyzed with respect to both strengths and areas that could benefit from development. The Assessment team reviewed the number of competencies in need of development, the extent of required development, and the nature of the competencies in need of development. These developmental factors were considered by the Assessment team, along with your demonstrated strengths and any demonstrated behavioural evidence related to successful on-the-job learning during the Integrated Assessment Process, in order to achieve a consensus rating on your potential to succeed in the Management Trainee Program.

Below is your final potential rating:

①	②	③	❹	⑤
low potential		**moderate potential**		**high potential**

You have demonstrated moderate to high potential to succeed in the Management Trainee Program based on your performance in the Integrated Assessment Process at this time.

Why changed (twice) other areas too?
3 to 4 in email?
why not considered in grade of 24 - why minimum 30?
6 x 5 = 30
who set this policy inflated barrier. screen more disabled + Indians?
why was forced grad not considered?
6 x 4 ~~perm~~ acceptable govt standard

This is Exhibit "23" referred to in the affidavit of Joshua Cohen sworn before me in Ottawa, Ontario, on the 7 day of OCT 2005.

Commissioner of oaths for the Federal Court of Canada
Sylvie Roy
Registry Officer
Agente du greffe

APPLICANT'S STATEMENT OF ARGUMENT

Basis for Motion For Reconsideration

1) This motion is made for the reconsideration of the judgment of the *Supreme Court of Canada* dismissing file #32161 on Nov. 15th, 2007, pursuant to *Rule 73 (1)* of the *RSCC* which states:

> *There shall be no reconsideration of an application for leave to appeal unless there are exceedingly rare circumstances in the case that warrant consideration by the Court.*

In light of the above, and in part, the Applicant motions this Court to carefully consider both the arguments below and the exceeding "totality of the circumstances" as also shed in the deposed *affidavit*, herein.

Governing Judicial Standard

2) As was relayed in J.C.'s *ALA* p. 22 , the standard of correctness remains the highest standard of judicial review and is sought from the highest Court. Moreover, in the above standard review backdrop, J.C. also seeks allowance to state a constitutional question related to his disability (inclusive of access to justice issues) to be further discussed below. The important remark, at this point, is that constitutional questions can move forward by means of the correctness standard. As was correlated in the favourable SCC dossier of *The Honourable Justice Mr. Paul Cosgrove v. AGC* [2006] F.C.R, p. 347:

> *As a consequence, I am satisfied that to the extent that the Inquiry Committee decided questions of constitutionality (and) its decisions should be reviewed against the correctness standard.*

3) The primary test question, allied with the standard of correctness, in the above case, which the Applicant seeks also, and as already sourced in his *ALA* at pp. 22, 27, was:

> *What would an informed person, viewing the matter realistically, and practically –and have thought the matter through –Conclude?"*

Access to Justice as a Basic Right

4) The main point in argument concerns the Applicant's current unrepresentative status in this Court. Joshua Cohen ("J.C."), is also a disabled self-represented party of "*indigent*" and/or "*in forma pauperis* status" currently without counsel. J.C. has been in this unrepresentative state for over two years with his human

rights case, despite requesting one from Legal Aid Ontario; and via a previous motion with the Federal Court of Appeal illuminating this concern, as was confirmed in the said *affidavit of J.C.* at paragraphs 25-28. Relevant sources already documented include the top judge's declaration that: "*Access to justice (is) a 'basic right' for Canadians like education and health care.*" The Applicant seeks this right, foremost, via *Rule 53 (7)* of the *SCA*:

> *The Court may, in its discretion, request any counsel to argue the case with respect to any interest that is affected and with respect to which counsel does not appear, and the reasonable expenses thereby occasioned may be paid by the Minister of Finance out of any moneys appropriated by Parliament for expenses in litigation.*

5) J.C. also made aware at par. 27 of his *affidavit* that he did not have counsel representation when he submitted written evidence to CHRC's Tribunal. This was obviously contrary to *Sec. 2 (e)* of the *Canadian Bill of Rights* as a submitted Gov't document confirms. Spelled out *Sec. 2(e)* declares:

> *Deprive a person of the right to a fair hearing in accordance to the principles of fundamental justice for the determination of his rights and obligations.*

Thus, "*determination of (the Applicant's) rights and obligations*" have never been addressed, via legal counsel representation, either in Tribunal and/or court hearings to this date!

Constitutional Question

6) Other than what was said at par. 29 of J.C.'s *Affidavit*, a constitutional question is another possibility, if supplemental submissions can be granted by this Court, as deferred to this Court's expertise. As one can see, the Applicant made a link to a ground of discrimination as confirmed by CHRC in J.C.'s *ALA* at pp., 33, 41 & 47. Herein is written by CHRC the ground being "*disability*" related to practices such as, "*refusal to hire,*" "*adverse differential treatment*" and "*discriminatory police (sic) and practices.*" (*J.C.'s ALA pp.* 33 & 41). Further, "*On May 9, 2005 (note: actually this is CHRC's Complaint Summary – J.C.'s actual submission was on May 4th, 2005 – see* J.C.'s *ALA p. 40), we received the revised complaint wherein you established a link to a ground (disability).*"

7) In summary, the above is a basis for a sec. 15 *CHRF* challenge. The stats in J.C.'s *ALA* at pp 45-46 reflect systemic discrimination of the hearing-impaired, as well as the even more shocking and compelling recent stats by the Canadian Assn For the Deaf. This was all outlined in J.C.'s *Affidavit* at par. 30-32.

8) The counsel unrepresentation is another public interest case re: civil litigation. This was further explained above and in J.C.'s *Affidavit* at par. 25-28. Furthermore, the Applicant is living proof … being right in the doors of the Supreme Court of Canada, as such, without a lawyer! With voices from the chief justice echoing through the land that "*access to justice (is) a 'basic right' for Canadians, like education and health care,*" gives a basis, also, for a combined sec. 7 & 15 *CHRF* test. The best the Supreme Court has done so far in a similar matter relates to *New Brunswick (Minister of Health ...) v. G.(J.)* [1999] 3 SCR 46 R. v. 1 [1990] 1 SCR. The Supreme Court allowed a mother state counsel representation with a goal to "rematriate" her with her child.

Unwritten Constitutions and Principles …

9) In the *Affidavit* Since laws do not cover everything, either from the legislative and/or executive branches of gov't, an unwritten constitution can and should be sought to protect fundamental unwritten principles and rights. One such basic right should be **access to justice** relating to civil litigation representation, especially for the indigent disabled as one of the most vulnerable of society. This would keep within the scope of an evolving inclusive society. Thus, J.C. seeks, foremost, relief via 53 (7) of the *Supreme Court*, as elaborated above. As shared, the Supreme Court's mandate is "accessibility to justice" (*J.C. 's Affidavit* at par. 18). In place as it is, judicial systemic barriers are occurring everyday in the courts. The indigent disabled are falling through the cracks, not only in employment opportunities, but also in various tribunals and courts. The Applicant, herein, is a case in point, even as his status is now, as dismissed with costs, in the Supreme Court of Canada!

Before I Go …

10) As relayed in my *Affidavit* at par. 38, a motion at the FCA denied exhibit "11." Now it is a secondary authority. In this *Ottawa Citizen* article of Dec. 5th, 2005, it glimmers hope to hear about Canada's top judge giving a speech "down-under" encouraging judges to go "up-over" written laws, constitutions and principles urging:

> ***judges to go beyond letter of the law – Courts should defy legislation to protect rights****, chief justice says."* Moreover, *"**judges should feel 'emboldened' to trump the written word of the constitution, when protecting fundamental, unwritten principles and rights** says Canada's chief justice." "**The rule of law requires judges to uphold unwritten constitutional norms, even in the face of clearly enacted laws or hostile public opinion*** (emphasis mine) …."
>
> --Chief Justice Beverly McLachlin--

STATEMENT OF ORDER SOUGHT AS TO COSTS

1) The Applicant respectfully requests that each party bear its own costs should the present Motion for Reconsideration be denied.

ORDER(S) SOUGHT

2) The Applicant respectfully requests that this Motion for Reconsideration be granted.

3) That the Applicant can have access to justice for legal representation, via *Rule* 53(7) of the *SCA*.

4) Allowance for additional supplemental submissions for a constitution question, as deferred to this Court's expertise.

5) At minimum, a letter of recommendation, directing Legal Aid Ontario to restore a legal certificate to the Applicant for the sake of accessibility to justice.

The whole respectfully submitted this 17th day of December, 2007

J. Cohen

Joshua Cohen, B.A., M.A.
Self-Representative for Applicant

TABLE OF AUTHORITIES

Case Law

Mr. Paul Cosgrove v. Attorney General of Canada (2006) 1 F.C.R. 347

New Brunswick (Minister of Health ...) v. G.(J.), [1999] 3 SCR 46; R v. 1 [1990] 1 SCR 190

Secondary Authorities

Cdn, Assn For the Deaf, *Employment and Employability* [Internet Source: May 26th, 2007]

Gov't of Canada, *An Introduction to Tribunal Proceedings* [Internet Source: Gov't of Canada]

Gov't of Ontario, *Provinces Call For Increased Funding for Legal Aid* [Internet Source: June 20th, 2007]

SCC's Mission and Objectives [Internet Source: Supreme Court of Canada]

The Ottawa Citizen, McLachlin Urges Judges to Go Beyond the Letter of the Law [Article: December 5, 2005]

The Star, Access to Justice [Internet Source: Aug. 12th, 2007]

PROVISIONS OF STATUTES AND REGULATIONS

Statutes/Regulations

Canadian Bill of Rights R.S.C. Appendix III. Sec. 2 (e)

Rules of the Supreme Court of Canada SOR/2006-203 Rule 73 (1)

Supreme Court Act R.S. 1985, c. 34, S.C. 2000, c.9 Sec. 53(7)

Cour suprême du Canada
Supreme Court of Canada

February 21, 2008

Mr. Joshua K. Cohen,
25 Pineglen Cres.
Ottawa, Ontario
K2E 6Y1

Dear Mr. Cohen:

RE: *Joshua K. Cohen, B.A., M.A. v. Attorney General of Canada*
File No.: 32161

I hereby acknowledge receipt of your motion for reconsideration of the decision of the Supreme Court of Canada rendered on November 15, 2007 dismissing your application for leave to appeal to this Court.

I wish to advise you that Rule 73 of the *Rules of the Supreme Court of Canada* states that there shall be no reconsideration of an application for leave to appeal unless there are exceedingly rare circumstances that warrant consideration by the Court. It also specifies that a motion for reconsideration must include an affidavit setting out the exceedingly rare circumstances of the case that warrant consideration by the Court and an explanation of why the issue was not previously raised.

I have reviewed your motion for reconsideration and your affidavit in support. Your arguments therein do not constitute those "rarest of cases" in which the Court would vary an order denying leave. I therefore regret to inform you that, in my opinion, your motion does not reveal the "exceedingly rare circumstances" warranting reconsideration by this Court. Furthermore, please note that section 78 of the *Rules of the Supreme Court of Canda* is not applicable.

I am, therefore, returning your documents. A reimbursement of the $75.00 motion fee will be sent to you under separate cover.

Yours truly,

Anne Roland
Registrar

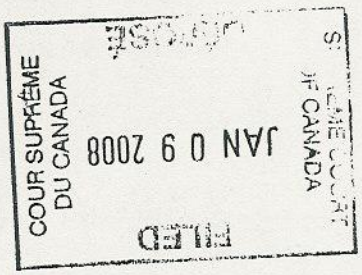
encl.

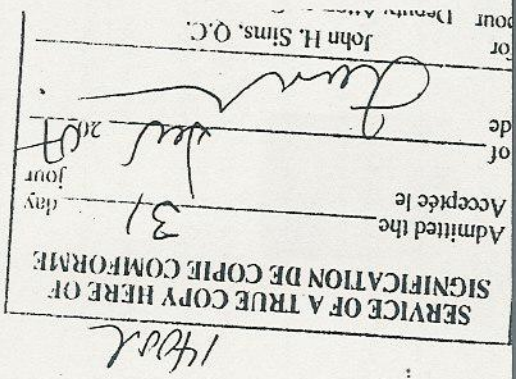
c.c.: Mr. Alexander M. Gay
Mr. Christopher M. Rupar

301, rue Wellington Street, Ottawa, Ontario, KIA OJI
Internet : www.scc-csc.gc.ca
Tel. / Tél. : (613) 996-8666 Fax / Téléc. : (613) 996-9138 E-mail / Courriel : registry-greffe@scc-csc.gc.ca

STAMPS ON BACK BENT OVER RE: ERRATUM (I) Applicant's (J.C.'s) Copy

(J.C.)





Affidavit

a) P. 6,par. 14,line 5, after (see J.C.'s *ALA,* p. 32) should read : "would pass go."

b) P. 8, par. 18, after "mandate" should read: "(Appendix p. 22)".

c) P. 9, par. 22, line 4, "document" should read: "documented".

Statement of Argument

i) P. 25, par. 1, line 4, "ldave" should read: "leave".

ii) P. 26, par. 4, line 3, "at paragraphs 25-28" should read: "at par. 3".

iii) P. 26, par. 5, line 1, "at par. 27" should read: "par. 12".

iv) P. 26, par. 6, line 1, "at par. 29" should read: "par. 12, 22".

v) P. 26, par. 7, line 4, "at par. 30-32" should read: "par. 15-17".

vi) P. 27 (a), par. 8, line 2, at "par. 25-28" should read: "par. 3, 10-13".

vii) P. 27 (a), par. 10, line 1, at "par. 38" should read: "par. 23".

Omitted Order

On page 27 (b), an Order as 6) was omitted and should have red: "A *Supreme Court* library pass for the Applicant, as part of *access to justice.*

February 5th, 2008

To: Registry (Supreme Court of Canada)

Re: *Joshua Cohen, B.A., M.A. v. AGC* (File #32161)

ERRATUM II

Please take note error corrections re: a *Motion for Reconsideration*, which the Applicant, Joshua Cohen ("J.C."), herein submits as either an interlineation, amendment and/or omission correction, if this Court will kindly regard and and append to the above file.

Re: Access to Justice

J.C. mentioned in his affidavit on p. 5 at par. 11: "Even as our chief justice has remarked, as paraphrased, the 'basic right' of representation for Canadians is an 'increasingly urgent situation' (Ibid, p. 17)." The above word 'representation' should be qualified as legal services, which is to be understood as part of access to justice.

In the submitted Justice Ministers' Press Release of June 20th, 2007, requesting fair and urgent federal funding for their respective provincial legal aid systems, the term "access to justice" in relation to legal (aid) services funding is mentioned no less than three times on page 15 of the above motion.

For instance, Newfoundland's minister has said, "Legal aid is fundamental in terms of **access to** our **justice** system and it greatly impacts the most vulnerable in our society (emphasis mine)."

Moreover, Alberta's Attorney General has remarked, "Legal aid is an important part of ensuring **access to justice** for all Canadians (bold mine)."

And finally, Manitoba's Attorney General has expressed, "We must ensure **access to justice** for low-income Canadians who need and deserve legal aid services."

The Canadian Bar Association, likewise, refers to "legal aid (as) the key to the courthouse door …. **All of us – regardless of means** – must be assured of effective and **equal access to the judicial system** when our fundamental interests are at stake (highlight mine)."

Relating to legal services and access to justice issues, the chief justice once relayed:

> *Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care and education.*
>
> - Beverly McLaughlin, Chief Justice, (2002) 29.1 Manitoba Law Journal 281.

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SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

S 0082

DATE Dec 20 20 07

RECEIVED FROM / REÇU DE Joshua Cohen

THE SUM OF / LA SOMME DE Seventy five XX/100 DOLLARS

DEBIT ☐ VISA ☑ MASTERCARD ☐ AMEX ☐ AMOUNT / MONTANT $ 75.00

PHOTOCOPIES ☐ FILING / DÉPÔT ☐ MOTION / REQUÊTE ☐ REASONS / MOTIFS ☐ OTHERS / DIVERS ☐

STYLE OF CAUSE : / INTITULÉ DE LA CAUSE : 32161

SIGNATURE

199 at 206, 48 O.R. (2d) 49, 27 B.L.R. 319, 52 C.B.R. (N.S.) 235, 12 D.L.R. (4th) 428, 5 O.A.C. 321 (C.A.), the court per Zuber J.A. 3. ". . . [I]n municipal financing [a debenture] is, ordinarily . . . a promise under seal to pay the bearer a principal sum and interest at certain times, and is an instrument transferable on the markets by delivery." *Toronto (City) v. Canada Permanent Mortgage Corp.*, [1954] S.C.R. 576 at 582, [1954] 4 D.L.R. 529, Rand J. See BANK ~S; COUPON ~; MORTGAGE ~.

DEBIT. *n.* A sum due or owing.

DEBIT NOTE. A note which states that the account of the person to whom it is sent will be debited.

DE BONIS ASPORTATIS. [L.] For goods taken away. See TRESPASS ~.

DE BONIS NON ADMINISTRATIS. [L.] A grant made when an administrator dies without having fully administered an estate or an executor dies intestate.

DEBT. *n.* 1. ". . . [I]ncludes any claim, legal or equitable, on contract, express or implied, or under a statute on which a certain sum of money, not being unliquidated damages, is due and payable, though an enquiry be necessary to ascertain the exact amount due." *Boldrick v. Salz*, [1952] O.W.N. 487 at 488 (C.A.), Hope J.A. 2. ". . . [A] sum payable in respect of a liquidated money demand recoverable by action. . . ." *Walsh v. British Columbia (Minister of Finance)* (1979), 5 E.T.R. 179 at 191, [1979] 4 W.W.R. 161, [1979] C.T.C. 251, 13 B.C.L.R. 255 (S.C.), Anderson J. 3. The term 'debt' is a narrower term [narrower than liability] and means a specific kind of obligation for a liquidated or certain sum incurred pursuant to an agreement. The term 'loan' is even narrower and means a specific type of debt. *Royal Trust Co. v. H.A. Roberts Group Ltd.*, 1995 CarswellSask 7, 31 C.B.R. (3d) 207, [1995] 4 W.W.R. 305, 17 B.L.R. (2d) 263, 44 R.P.R. (2d) 255, 129 Sask. R. 161 (Q.B.), Baynton J. 4. In an action in contract there is a distinction between debt and damages. In an action on a debt the plaintiff claims money that is owed as money. The law of damages is concerned with the assessment of money compensation for legal wrongs—the translation, so to speak, of a legal wrong into a money sum. *Lafrentz v. M & L Leasing Ltd. Partnership*, 2000 CarswellAlta 1121, 2000 ABQB 714, 8 B.L.R. (3d) 219, [2001] 1 W.W.R. 629, 85 Alta. L.R. (3d) 233, 275 A.R. 334 (Q.B.), Perras J. See ATTACHMENT OF ~S; BAD ~; BOOK ~S; CONSUMER ~; FAMILY ~; JUDGMENT ~; NATIONAL ~; SPECIALTY ~.

DEBT OBLIGATION. A bond, debenture, note, investment certificate or other evidence of indebtedness or a guarantee of a corporation, whether secured or unsecured.

DEBTOR. *n.* 1. One who owes a debt. 2. A person to whom or on whose account money lent is advanced and includes every surety and endorser or other person liable for the repayment of money lent or upon agreement or collateral or other security given in respect thereof. *Unconscionable Transactions Relief acts*. R.S.C. 1985, c. B-3, s. 2. 3. An insolvent person and any person who, at any time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt. *Bankruptcy Act*, R.S.C. 1985, c. B-3, s. 2. See ABSCONDING ~; JUDGMENT ~.

DEBT SECURITY. Any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured. *Securities Act*, R.R.O. 1980, Reg. 910, s. 1.

DÉC. B.-C. *abbr.* Décisions des Tribunaux du Bas-Canada (1851-1867).

DECEASED. *n.* 1. A dead person. 2. A testator or a person dying intestate. *Dependants Relief acts*.

DECEIT. *n.* ". . . [A] false representation of fact by words or conduct . . . made . . . with the knowledge of its falsity; . . . [and] with the intention that it be acted upon . . . [and that it was in fact acted upon] in reliance upon the representation and that . . . damage [was sustained in so doing]." *Bell v. Source Data Control Ltd.* (1988), 40 B.L.R. 10 at 17, 29 O.A.C. 134, 66 O.R. (2d) 78, 53 D.L.R. (4th) 580 (C.A.), Cory J.A. (dissenting).

DECEIVE. *v.* To induce a person to believe that something which is false is true.

DECERTIFICATION. *n.* Removal of a union's right to represent a group of employees for collective bargaining purposes.

DECISION. *n.* 1. A judgment, ruling, order, finding, or determination of a court. 2. ". . . [O]f a Court or Judge means the judicial opinion, oral or written, pronounced or delivered, upon which the 'judgment or order' is founded and the 'judgment or order' is the embodiment in legal procedure of the result of such decision . . ." *Fermini v. McGuire* (1984), 42 C.P.C. 189 at 191, 64 N.S.R. (2d) 421, 143 A.P.R. 421 (C.A.), Macdonald J.A. See STATUTORY POWER OF ~.

DECLARANT. *n.* One who makes a declaration.

DECLARATION. *n.* 1. A formal statement of the opinion or decision of a court on the rights of interested parties or the construction of a will, deed or other written instrument. 2. ". . . [D]iffers from other judicial orders in that it declares what the law is without pronouncing any sanction against the defendant, but the issue which is determined by a declaration clearly becomes res judicata between the parties and the judgment a binding precedent." *LeBar v. Canada* (1988), 46 C.C.C. (3d) 103 at 108, 33 Admin. L.R. 107, 22 F.T.R. 160n, 90 N.R. 5 (C.A.), the court per MacGuigan J.A. See DYING ~; SOLEMN ~; STATUTORY ~.

DECLARATION OF TRUST. Creation of a trust when the trust property is already held by the intended trustee by execution of a deed declaring that the trustee holds the property in trust for the executor of the deed.

DECLARATORY JUDGMENT. Declaring the parties' rights or expressing the court's opinion on a question of law, without ordering that anything be done.

if a decision were made in bad faith, that is for an improper purpose or motive, in a discriminatory manner, or the decision-maker ignored a relevant factor or considered an irrelevant one, then the decision must be set aside. [Whether or not a factor is relevant may be in issue.] The same fate awaits a decision based on a mistaken principle of law or a misapprehension of the facts (as opposed to inferences drawn from accepted facts) or what is commonly referred to as a "palpable and overriding error". *Suresh v. Canada (Minister of Citizenship & Immigration)*, 2000 CarswellNat 25, 183 D.L.R. (4th) 629, 5 Imm. L.R. (3d) 1, 252 N.R. 1, 18 Admin. L.R. (3d) 159, [2000] 2 F.C. 592, 180 F.T.R. 57 (note) (C.A.), the court per Robertson J.A.

JUDICIAL NOTICE. ". . . [T]he acceptance by a Court or judicial tribunal, without the requirement of proof, of the truth of a particular fact or state of affairs that is of such general or common knowledge in the community that proof of it can be dispensed with. . . ." *R. v. Potts* (1982), 134 D.L.R. (3d) 227 at 233, 36 O.R. (2d) 195, 14 M.V.R. 72, 26 C.R. (3d) 252, 66 C.C.C. (2d) 219 (C.A.), the court per Thorson J.A.

JUDICIAL OFFICER. See BRIBERY OF ~.

JUDICIAL OR QUASI-JUDICIAL PROCEEDING. "It is possible . . . to formulate several criteria for determining whether a decision or order is one required by law to be made on a judicial or quasi-judicial basis. The list is not intended to be exhaustive. (1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached? (2) Does the decision or order directly or indirectly affect the rights and obligations of persons? (3) Is the adversary process involved? (4) Is there an obligation to apply substantive rules to many individual cases rather than . . . in a broad sense?" *Minister of National Revenue v. Coopers & Lybrand*, [1979] 1 S.C.R. 495 at 504, 92 D.L.R. (3d) 1, [1978] C.T.C. 829, 78 D.T.C. 6258, the court per Dickson J.

JUDICIAL PROCEEDING. 1. A proceeding (a) in or under the authority of a court of justice, (b) before the Senate or House of Commons or a committee of the Senate or House of Commons, or before a legislative council, legislative assembly or house of assembly or a committee thereof that is authorized by law to administer an oath, (c) before a court, judge, justice, provincial court judge or coroner, (d) before an arbitrator or umpire, or a person or body of persons authorized by law to make an inquiry and take evidence therein under oath, or (e) before a tribunal by which a legal right or legal liability may be established, whether or not the proceeding is invalid for want of jurisdiction or for any other reason. *Criminal Code*, R.S.C. 1985, c. C-46, s. 118 as am. by R.S.C. 1985 (1st Supp.), c. 27, s. 15. 2. Includes any action, suit, cause, matter or other proceeding in disposing of which the court appealed from has not exercised merely a regulative, administrative or executive ju-

JUDICIAL REVIEW. 1. The right of a court to investigate and question the validity of any legislation enacted by a Canadian legislative body, notably as to whether that statute transgresses some constitutional prohibition. P.W. Hogg, *Constitutional Law of Canada*, 3d ed. (Toronto: Carswell, 1992) at 117 and 119. 2. The investigation and determination by a court of the legal validity of an act, decision, instrument or transaction, of a question of vires, jurisdiction, concerning an obligation to observe the rules of natural justice or "act fairly", or concerning principles which should be observed when statutory discretion is exercised. S.A. DeSmith, *Judicial Review of Administrative Action*, 4th ed. by J.M. Evans (London: Stevens, 1980) at 26. 3. The power of the court to review the actions and decisions of administrative decision-makers. It is not an investigation into the appropriateness of the result, but is an investigation into the propriety of the processes which brought about that result. 4. Refers to any relief that the applicant would be entitled to in any one or more of the following: Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. *Judicial Review Procedure Act*, R.S.O. 1990, c. J-1, s. 2. 5. The control of executive action by the courts.

JUDICIAL SEPARATION. A decree which does not affect status of a married couple but simply acknowledges the deterioration of a union. J.G. McLeod, *The Conflict of Laws* (Calgary: Carswell, 1983) at 702.

JUDICIAL TRUSTEE. In the Yukon Territory and the Northwest Territories, British Columbia, Alberta and Saskatchewan, there is provision in the territorial or provincial Trustee ordinance or act for the appointment of any "fit and proper person" to this role. D.M.W. Waters, *The Law of Trusts in Canada*, 2d ed. (Toronto: Carswell, 1984) at 103.

JUDICIARY. *n.* The bench, the judges collectively.

JUNIOR. *adj.* Younger; of lower rank.

JURAT. *n.* [L.] A clause at the bottom of an affidavit which states where, when and before whom that affidavit was sworn.

JURIDICAL. *adj.* Relating to the administration of justice.

JURIDICAL DAY. A day on which one may transact legal business.

JURISDICTION. *n.* 1. ". . . [R]efers to the power of the court to hear a particular matter. . . ." *Tolofson v. Jensen* (1992), 9 C.C.L.T. (2d) 289 at 293, 4 C.P.C. (3d) 114, 65 B.C.L.R. (2d) 114, [1992] 3 W.W.R. 743, 89 D.L.R. (4th) 129, 11 B.C.A.C. 94, 22 W.A.C. 94, the court per Cumming J.A. 2. A province or territory of Canada or a state outside Canada having sovereign power. 3. The authority of an administrative tribunal over a particular subject matter which is

scope of the authority of a government in terms of subject matter or territory. See APPELLATE ~; CONCURRENT ~; COURT OF COMPETENT ~; EXCLUSIVE ~ CLAUSE; FEDERAL ~; FOREIGN ~; GENERAL ~; INHERENT ~; STATUTORY ~; SUMMARY ~.

JURISDICTIONAL ERROR. 1. The refusal by a body to exercise a power. 2. The purported exercise of a power which the body does not have 3. The exercise of the wrong power in the circumstances.

JURIS ET DE JURE. [L. of law and from law] Describes a presumption which is a conclusive presumption.

JURISPRUDENCE. *n.* 1. The philosophy or science of law which ascertains the principles which are the basis of legal rules. 2. A body of law. See MEDICAL ~.

JURIST. *n.* A civil lawyer; an eminent legal theorist; a civilian.

JURISTIC PERSON. See LEGAL PERSON.

JURISTIC REASON. But even if the principles of unjust enrichment are applicable, the law is clear that "a contract" can constitute a juristic reason for the enrichment. As a recent example of this, see the decision of this Court in *Hill Estate v. Chevron Standard Ltd.* (1992), 83 Man. R. (2d) 58 (Man. C.A.) (at p. 70): Decided cases are of little assistance in determining what is meant by "juristic reason." It simply comes down to this: if there is an explanation based upon law for the enrichment of one at the detriment of another, then the enrichment will not be considered unjust and no remedy, whether by constructive trust or otherwise, will be available. *For example, there might be a contract between the parties under the terms of which an enrichment by one at the expense of the other is contemplated or justified.* [emphasis added]. *Rillford Investments Ltd. v. Gravure International Capital Corp.*, 1997 CarswellMan 247, 118 Man. R. (2d) 11, 149 W.A.C. 11, 32 B.L.R (2d) 85, [1997] 7 W.W.R. 534 (C.A.), Scott C.J. M.

JUROR. *n.* [L.] A person who serves on a jury.

JURORS' PRIVILEGE. Jurors are privileged against disclosing deliberations in a jury room. Section 649 of the Criminal Code, R.S.C. 1985, c. C-46 makes disclosing such information an offence. P.K. McWilliams, *Canadian Criminal Evidence*, 3d ed. (Aurora: Canada Law Book, 1988) at 35-74.

JURY. *n.* 1. A group of people sworn to deliver a verdict after considering evidence delivered to them concerning the issue. 2. The jury is a judicial organ of the criminal process. It accomplishes a large part of the function exercised by judges in non-jury criminal cases. In a jury trial, the jury is the "judge" of the facts, while the presiding judge is the "judge" of the law. They, judge and jury together, produce the judgment of the court. The jury hears all the evidence admitted at trial, receives instructions from the trial judge as to the relevant legal principles, and then retires to deliberate. It applies the law to the facts in order to arrive at a verdict. *R. v. Pan*, 2001 97, 200 D.L.R. (4th) 577, 43 C.R. (5th) 203, 147 O.A.C. 1, 85 C.R.R. (2d) 1, 270 N.R. 317, the court per Arbour, J. See CHARGE THE ~; EMPANEL; GRAND ~; HUNG ~; IMPANEL.

JURY PANEL. Those persons summoned from amongst whom a jury will be selected.

JURY SECRECY. The common law rule of jury secrecy, which prohibits the court from receiving evidence of jury deliberations for the purpose of impeaching a verdict, . . . reflects a desire to preserve the secrecy of the jury deliberation process and to shield the jury from outside influences. . . . A proper interpretation of the modern version of Lord Mansfield's rule is as follows: Statements made, opinions expressed, arguments advanced and votes cast by members of a jury in the course of their deliberations are inadmissible in any legal proceedings. In particular, jurors may not testify about the effect of anything on their or other jurors' minds, emotions or ultimate decision. On the other hand, the common law rule does not render inadmissible evidence of facts, statements or events extrinsic to the deliberation process, whether originating from a juror or from a third party, that may have tainted the verdict. *R. v. Pan*, 2001 CarswellOnt 2261, 2001 SCC 42, 155 C.C.C. (3d) 97, 200 D.L.R. (4th) 577, 43 C.R. (5th) 203, 147 O.A.C. 1, 85 C.R.R. (2d) 1, 270 N.R. 317, the court per Arbour J. See LORD MANSFIELD'S RULE.

JUS. *n.* [L.] Law; right; equity; rule; authority. See IGNORANTIA JURIS HAUD EXCUSAT.

JUS ACCRESCENDI. [L.] The right of survivorship which is essential to joint tenancy. E.L.G. Tyler & N.E. Palmer, eds., *Crossley Vaines' Personal Property*, 5th ed. (London: Butterworths, 1973) at 56.

JUS CIVILE. [L.] Local law.

JUS COMMUNE. [L.] Common law.

JUS DISPONENDI. [L.] The right to dispose.

JUS GENTIUM. [L.] Customary law.

JUS HABENDI. [L.] The right to actually possess property.

JUS HAEREDITATIS. [L.] The right to inherit.

JUS IN PERSONAM. [L.] A right which gives the one holding it power to help another person to do or not to do, to gain or give anything.

JUS IN RE. [L.] A full and complete right; a real right or a right to have something to the exclusion of everyone else.

JUS NATURALE. [L.] Natural law.

JUS POSSESSIONIS. [L.] The right to possess.

JUS PRIVATUM. [L.] The municipal or civil law.

JUS PUBLICUM. [L.] The law concerning public affairs.

JUST. *adj.* ". . . [A] just remedy in the context of the criminal law is one which, while furthering the object

have all the powers that the immediate beneficiary and the trustees of the settlement would have in the case of *settled land. Under a trust for sale, however, the beneficiaries are treated for most purposes as having interests in the proceeds of sale, not in the land itself.

trust instrument A deed under which property is vested in trustees upon trust to apply it for the benefit of the beneficiaries specified in the deed. In the case of *settled land, the trust instrument appoints the trustees of the settlement, sets out the interests to which the beneficiaries are entitled and any powers conferred in extension of those contained in the Settled Land Act 1925, and bears any *ad valorem* stamp duty payable in respect of the settlement.

trust power (power in the nature of a trust) A *power of appointment held by trustees. The trustees are bound to consider whether or not to exercise the power, which donees of a mere power are not obliged to do, and to that extent objects of a trust power have rights similar to those of beneficiaries under a trust.

trust property Property subject to a *trust, normally held by trustees (it may include trust documents, which affect the trust). If trust property is wrongfully disposed of, it may be recovered by the beneficiaries (*see* tracing trust property).

trust territory Any of the territories formerly under a League of Nations *mandate, which after 1945 were placed under the *trusteeship* of the United Nations until ready for independence. The only remaining trust territory is the Pacific strategic trust area.

turbary *n.* A *profit *à prendre* or *common conferring the right to take peat or turf from another's land, for use as fuel.

turning Queen's evidence *See* Queen's evidence.

turpis causa [Latin] An evil cause. *See* illegal contract.

two-counsel rule A rule of etiquette of the Bar that required junior counsel to be instructed to assist Queen's Counsel when the latter appeared in court or in chambers. This rule has now been abolished, but two counsel are often instructed when the weight of the case justifies it.

U

uberrimae fidei [Latin: of the utmost good faith] Describing a class of contracts in which one party has a preliminary duty to disclose material facts relevant to the subject matter to the other. *Nondisclosure makes the contract voidable. Examples of this class are *insurance contracts, in which knowledge of many material facts is confined to the party seeking insurance.

ultra vires [Latin: beyond the powers] Describing an act by a public authority, company, or other body that goes beyond the limits of the powers conferred on it. *Ultra vires* acts are invalid (*compare intra vires*). The *ultra vires* doctrine applies to all powers, whether created by statute or by a private document or agreement (such as a trust deed or contract of agency). In the field of public (especially administrative) law it governs the validity of all *delegated (including subdelegated) legislation. This is *ultra vires* not only if it contains provisions not authorized by the enabling power but also if it does not comply with any procedural requirements regulating the exercise of the power. Subdelegated legislation that is within the terms of the delegated legislation authorizing it may still be invalid if the power to make that legislation did not include power to subdelegate (*see delegatus non potest delegare*). The individual can normally establish the invalidity of delegated or subdelegated legislation by raising the point as a defence in proceedings against him for contravening it. The doctrine also governs the validity of decisions made by inferior courts or administrative or domestic tribunals and the validity of the exercise of any *administrative power. The decision of a court or tribunal is *ultra vires* if, for example, it exceeds jurisdiction, contravenes procedural requirements, or disregards the rules of natural justice (the power conferring jurisdiction being construed as requiring the observance of these). Similarly, the exercise of an administrative power is *ultra vires* not only if unauthorized in substance, but equally if (for example) it is procedurally irregular, improperly motivated, or in breach of the rules of natural justice (where applicable). The remedies available for this second aspect of the doctrine are *certiorari, *prohibition, *declaration, and *injunction (the first two of these are, however, public remedies and are not therefore available against decisions of domestic tribunals whose jurisdiction is based solely on contract).

Acts by a registered company are *ultra vires* if they exceed the purposes specified in the objects clause of the *memorandum of association. An act within or reasonably incidental to these purposes is *intra vires* and valid. However, an individual dealing with a company in good faith may be able to enforce certain *ultra vires* transactions under the European Communities Act 1972. Good faith is presumed unless, for example, the company can show that the person knew the act was *ultra vires*. Under the Act *constructive notice of the memorandum and articles of association cannot be used to establish such knowledge.

umpire *n.* *See* arbitration.

UN *See* United Nations.

unascertained goods Goods that are not specifically identified at the time a contract of sale is made. For example, in a contract for the sale of 1000 tonnes of soya bean meal, the seller may deliver any 1000 tonnes that answer the contract description. When the correct quantity has been set aside for delivery to the buyer, the goods are described as *ascertained*. Ownership does not pass to the buyer until the goods have been ascertained. *Compare* specific goods.

unchastity *n.* *See* imputation of unchastity.

uncollected goods *See* disposal of uncollected goods.

unconscionable bargain *See* catching bargain.

uncontrollable impulse *See* irresistable impulse.

undefended cause **1.** A court action in which the defendant: (1) fails to acknowledge service of the writ; (2) fails to enter a statement of defence; or (3) fails to appear, or be represented, at the hearing of the case despite the fact that he has received notice of it. In such actions, judgment may be entered in favour of the plaintiff; in special circumstances, however, the defendant may apply for the judgment to be cancelled (*see* setting aside). **2.** A petition for divorce, nullity, or judicial separation not contested by the respondent. This may be because: (1) the respondent declares in his acknowledgment of service that he does not intend to contest the petition; (2) he gives notice of his intention to defend but fails to file an answer to the petition within the time allowed (usually 29 days from the day he received the petition); (3) he files no answer at all; or (4) the answer filed has been struck out. County courts only have jurisdiction to hear undefended causes; if they become defended, they must be transferred to the High Court. Undefended causes for divorce or judicial separation may be dealt with under the special procedure (*see* divorce).

APPLICANT'S STATEMENT OF ARGUMENT

Basis for Motion For Stay of Execution

1) This motion is made to a judge (i.e., to chief justice B. McLachlin) for the stay of execution of the judgment/order/decision by the Registrar of the *Supreme Court of Canada ("SCC")* dismissing the last motion for reconsideration ("*MFR*") of file #32161 on Feb. 21st, 2008, pursuant to *Rule 62* of the *RSCC* which states:

> *Any party against whom a judgment has been given, or an order made, by the Court or any other court, may make a motion to the Court for a stay of execution or other relief against such judgment or order, and the Court may give such relief on the terms that may be appropriate.*

(Note: *In the Dictionary of Cdn Law,* p. 121 (Append. p. 42) it affirms: "**Decision** n. 1. A **judgment, ruling, order**, or **finding of a court** …. 'judgment or order; is the embodiment in legal procedure of the result of such **decision** (jurisprudence follow – bold mine)."

Governing Judicial Standard

2) As was relayed in J.C.'s *Application for Leave to Appeal ("ALA")* p. 22 and on p. 25 (now corner p. 31) of *MFR*, the **standard of correctness** remains the highest standard of judicial review and is sought from the highest Court. The primary test question, allied with the standard of correctness, in the above case, which the Applicant seeks also, and as already sourced in his *ALA* at pp. 22, 27, was:

> *What would an informed person, viewing the matter realistically, and practically –and have thought the matter through –conclude?"*

"Ultra-Vires" …

3) J.C. remains without counsel despite his requests and arguments in his latest *MFR*, pp 3-6, 12-13, 25-27 (now corner pp. 10-13, 19-20, 32-34). Thus, "access to justice," as a basic 'right' on this point alone has yet to be realized, via 53(7) of the *Supreme Court Act*, for instance. Further, J.C.'s last *MFR* was specifically a motion to a **judge** (now p. 8), namely chief justice Beverly McLachlin, pursuant to the **sanctioned discretion/choice** by the moving party, as found in Rule 47 (1) of the *RSCC* which positions:

> *Unless otherwise provided in these Rules, all motions shall be made before **a judge or the Registrar** … and consist of the following documents:*
>
> *(a) a notice of motion in accordance with **Form 47*** (emphasis mine).

4) The said Form 47 also authorizes the moving party the same discretion as accorded in the above ruling. For instance the Form 47 begins: "TAKE NOTICE that (name) herby applies to (a judge or the Registrar of the Court, as the case may be) …." Thus, J.C. inserted his name as the moving party and directed his *MFR* specifically to a judge –chief justice Beverly McLachlin - as seen in the *MFR* enclosed on p. 1 (now p. 8). The redirection to the Registrar is obviously procedurally irregular and does not flow with the rules of natural law.

5) According to *The Dictionary of Concise Law*, p. 375 (see Append. p. 44), it confirms, for example:

> *The* ***decision of a court*** *or tribunal is* ***ultra vires*** *if, for example, it exceeds jurisdiction,* ***contravenes procedural requirements, or disregards the rules of natural justice….*** *Similarly, the exercise of* ***an administrative power*** *is* ***ultra vires*** *not only if* ***unauthorized in substance****, but equally if (for example) it* ***is procedurally irregular, improperly motivated, or in breach of the rules of natural justice*** …(emphasis mine).

6) Further, irregular procedures (ultra-vires) occurred when Erratum I & II were filed with J.C.'s *MFR* on Jan. 9th, 2008 and Feb. 5th, 2008 (pp. 39-40), yet the *MFR* was only received. Moreover, motion (filing) fees of $75.00 were paid on Dec. 20th, 2007 (p. 41) and the Registrar's Feb. 21st, 2008 (p. 38) confirms that transaction occurred by wanting now to refund the motion (filing) fee. One needs to question why the motion filing did not occur? This obviously "*contravenes procedural requirements, disreguards the rules of natural justice* and/or is *procedurally irregular, improperly motivated, or in breach of the rules of natural justice."*

7) Moreover, in the Registrar's letter of Feb. 21st, 2008 (p. 38), Madame Ann Roland writes, "… please note that section 78 of the *Rules of the Supreme Court of Canda* (sic) is not applicable." This certainly restrains the flow of procedural fairness, natural justice and/or good faith by forbidding J.C. recourse to Rule 78 of the *RSCC.* Herein, natural justice allows Review of an Order of the Registrar:

> *Within 20 days after the Registrar makes an order,* ***any party affected by the order may make a motion to a judge to review the order …*** (emphasis mine).

So, the question remains, why I can't do the above and is this "*improperly motivated*"? And for sure it obviously contravenes procedural fairness, natural justice, good faith and accessibility to justice which, the latter, is one of the mandates of the *Supreme Court.*

"Improperly Motivated ...?"

8) The Courts have spoken quite clearly about the marginalization of the hearing-impaired by institutions (which would not exclude the courts). However, times are brighter and in a recent favourable Federal Court judgment in *The Canadian Assn of the Deaf ...vs. Her Majesty the Queen* [2006] at par. 88-89 it quotes:

> *Persons with disabilities have too often been excluded from the labour force, denied access to opportunities for social interaction and advancement, subjected to invidious stereotyping and relegated to institutions....* ***As a result, disabled persons have not generally been afforded the "equal concern, respect and consideration" that s. 15(1) of the Charter demands****. Instead, they have been subjected* ***to paternalistic attitudes*** *of pity and charity, and their entrance into the social mainstream has been conditional ....*
>
> *One consequence of these attitudes is the persistent social and economic disadvantage faced by the disabled.* ***Statistics*** *indicate that persons with disabilities, in comparison to non-disabled persons, have less education, are more likely to be outside the labour force, face much higher unemployment rates .... [89]* ***Deaf persons have not escaped this general predicament***...(bold mine).

9) The Registrar's letter of Feb. 21st, 2008 (p. 38) by Anne Roland expresses her estimation: "in my opinion your motion does not reveal the 'exceeding rare circumstances' warranting reconsideration by this court." And this, despite what the above lower courts are saying and the **incredible stats** also shared in J.C.'s *ALA* p. 46 and on p. 7 (now p. 14) of the *MFR* that up to 7, 500,000 million hearing impaired in Canada and that there are only "three or four deaf lawyers" in all of Canada. And it astounds me that the Registrar was not compelled by the above material before her! So, by all standards, even if J.C. was a lawyer here at the Supreme Court, that would be even the "rarest of cases" and/or "exceeding rare circumstance," if you wish! And why would that be? Obviously because of historical disadvantage, discrimination, persecution, paternalistic (and/or maternalistic) attitudes, which can occur in the Courts even! And now imagine J.C. as a disabled unrepresented laity since going on almost three years in the courts!!!

Apprehension Bias...

10) The Applicant still has filed with the Supreme Court Registry, a private and confidential Dec. 3rd, 2007 Taxation objection re: costs ordered by this Court to the *Attorney General*. And the *MFR* was 'received' Dec. 18th, 2007, yet it was addressed first. Thus, it remains to be seen if the taxation objection will still now be equitably dealt with after this motion for a stay of the Registrar's Feb. 21st,

2008 execution. And if this motion will be filed procedurally correct or at all and even arrive at its intended recipient – the honourable chief justice B. McLachlin, as the Applicant has directed all along? And I, J.C., for the record, still have faith that there are still some good men and women within the justice system.

STATEMENT OF ORDER SOUGHT AS TO COSTS

1) The Applicant respectfully requests that each party bear its own costs should the present Motion for a Stay of Execution be denied.

RELIEF SOUGHT

2) The Applicant respectfully requests that this Motion for a Stay of Execution of the Registrar's letter of Feb. 21st, 2008 be granted.

3) That the Motion for Reconsideration, within this motion (as an appended document) be filed.

4) If not the above (#3), then, at minimum, that the said Motion for Reconsideration be filed separately, without costs, if possible.

5) That All the Orders Sought in the Motion for Reconsideration be respectfully considered and ultimately be granted in due course, after its appropriate filing and response(s).

6) That the letter of Feb. 21st, 2008 be striked from the official record, as pre-mature. (Note: the respondent has not even replied yet to J.C.'s motion for reconsideration which yet waits to be filed).

7) That a Counsel can be provisioned for the Applicant ASAP, via 53(7) of the *Supreme Court Act.*

The whole respectfully submitted this 11th day of March, 2008

J. Cohen

Joshua Cohen, B.A., M.A.
Self-Representative for Applicant

TABLE OF AUTHORITIES

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Cdn Assn for the Deaf ... v. Her Majesty the Queen [2006] FC 971

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Martin, Elizabeth, M.A. *The Concise Dictionary of Law*. Oxford Univ. Press: Toronto, 1983.

PROVISIONS OF STATUTES AND REGULATIONS

Statutes/Regulations

Rules of the Supreme Court of Canada SOR/2006-203 Rules 47, 62, 78

Supreme Court Act R.S. 1985, c. 34, S.C. 2000, c.9 Sec. 53(7)

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